THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 7th day of December,2007

W.P.Nos.34001, 31926 and 36844 of 1998

W.P.No.34001 of 1998

Between:-

Life Insurance Corporation of
India, South Central Zone Office,
Jeevanbhagya, Saifabad,
Hyderabad, rep. by its
Zonal Manager … Petitioner

and

The Controlling Authority under Payment
of Gratuity Act,972 and Assistant Labour
Commissioner (Central) Hyderabad, AIT
Campus, Vidyanagar, Hyderabad
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.34001, 31926 and 36844 of 1998

COMMON ORDER:

W.P.No.34001 of 1998

This Writ Petition is filed seeking a Mandamus declaring the Order passed by the 3rd respondent in Proceedings No.36/1/98-E1, dated 16-11-1998 as arbitrary and illegal.

Petitioner is the Management of Life Insurance Corporation of India, South Central Zonal Office, Hyderabad represented by its Zonal Manager. Respondent No.2 is the ex-employee of the petitioner. Respondent No.1 is the Controlling Authority under the Payment of Gratuity Act,1972 and Assistant Commissioner (Central), Hyderabad and respondent No.3 is the Appellate Authority under the Payment of Gratuity Act,1972 and Regional Labour Commissioner (Central), Hyderabad. Respondent No.4 is the District Collector, Hyderabad and respondent No.5 is the Mandal Revenue Officer, Nampally, Hyderabad.

It appears, the 2nd respondent while working as Assistant in Life Insurance Corporation of India was dismissed from service by an Order dated 18-5-1995 after conducting a domestic enquiry into the charges levelled against him. Ultimately, the funds collected and not remitted i.e. Rs.30,670.50 ps was also recovered from the Provident Fund account of the 2nd respondent. According to the petitioner-management, even the Writ Petition filed by the employee in W.P.No.29777 of 1997 against the order of dismissal from service was also dismissed by this Court on 21-4-1998. After his dismissal, the 2nd respondent sought for payment of gratuity as per his eligibility. When it was not paid, he filed a claim petition before the 1st

respondent-Controlling Authority in Form 'N' claiming an amount of Rs.2,00,000/- towards gratuity. A detailed counter was filed by the petitioner herein in the said claim petition stating that firstly, the very claim petition is not maintainable in view of sub-section 2(c) of Section 48 of the Life Insurance Corporation Act,1956 and secondly, as the 2nd respondent was dismissed from service, he is not entitled for gratuity as per Rule 19 of the Life Insurance Corporation of India Class III and Class IV Employees' (Revision of Terms and Conditions of Service) Rules,1985 (for short 'the Rules'). After hearing both the parties, on an elaborate consideration of the matter, the Controlling Authority directed the petitioner herein to pay 90% of the total gratuity to the 2nd respondent herein and 10% may be withheld as penalty. The above mentioned 90% amount should be paid with interest. That is how the controlling authority has come to the conclusion that the total gratuity payable by the petitioner is Rs.1,43,100/-. Insofar as the maintainability of the claim petition is concerned, it was held that such a petition is maintainable in view of Section 14 of the Payment of Gratuity Act,1972 (for short 'the Act'). Further, sub-rules 5(i) and 5(ii) of Rule 19 of the Rules, read together, would indicate that if punishment of dismissal is imposed on an employee for any act involving the Corporation in financial loss, the gratuity payable to him shall stand forfeited to the extent of such loss. Aggrieved by the same, petitioner carried the matter in appeal before the 3rd respondent-appellate authority. Petitioner raised the same grounds and arguments before the appellate authority. The appellate authority concurred with the findings recorded by the controlling authority and held that Section 14 of the Act lays down that the provisions of the Act will have overriding effect over other provisions of any other enactment. Therefore, it is clear that the Act is totally enforceable and overrides the other

enactments including LIC Act,1956 and the Rules on which the petitioner-Corporation has relied upon and as such, the Controlling Authority has jurisdiction to entertain such a petition as per law. Further, the appellate authority has stated that though the 2nd respondent was dismissed from service for the loss caused by him to the Corporation, the said loss caused was also recovered from him and as such, under Rule 19(5)(ii) of the Rules, the 2nd respondent is entitled for gratuity. Thus, the appellate authority refused to interfere with the Order passed by the controlling authority and dismissed the appeal. Challenging the same, the present Writ Petition is filed.

Learned counsel for the petitioner raised the following questions for consideration of this Court:

(i) Whether the Controlling Authority under the Act has no jurisdiction to entertain the claim petition in Form 'N' ?

(ii) Whether the order of dismissal from service amounts to moral turpitude and as such, the provisions of Rule 19(5)(ii) of the Rules are applicable or the case on hand does not fit into the teeth of Rule 19(5)(ii) of the Rules ?

Insofar as the jurisdiction of the Controlling Authority is concerned, learned counsel for the petitioner relied upon a Judgment reported in **L.I.C. v. D.J. BAHADUR**[1] and drawn attention of the Court to paragraph 110, which reads as under:

> "110. Now in relation to proposition (a) it cannot be gainsaid that the I. D. Act deals with the adjudication or settlements of disputes between an employer and his workmen and would, therefore, be a special law vis-a-vis another statute which covers a larger field and may thus be considered "general" as compared to it. It cannot, however, be regarded as a special law in relation to all other laws irrespective of the subject-matter dealt with by them. In fact a law may be special when considered in relation to another piece of legislation but only a general one vis-a-vis still another. An example will help illustrate the point. A law governing matters pertaining to

medical education would be a special law in relation to a statute embracing education of all kinds but must be regarded as a general law when preference over it is claimed for what I may call a more special law, such as an Act dealing with only one aspect of medical education, say, instruction in the field of surgery. And even this "more special" law may become general if there is a conflict between it and another operating in a still narrower filed, e. g., thoracic surgery, "Special" and "general" used in this context are relative terms and it is the content of one statute as compared to the other that will determine which of the two is to be regarded as special in relation to the other. Viewed in this light proposition (a) cannot stand scrutiny. The I. D. Act would no doubt be a special Act in relation to a law which makes provision for matters wider than but inclusive of those covered by it, such as the Indian Contract Act as that is a law relating to contracts generally (including those between an industrial employer and his workmen), but it would lose that categorisation and must be regarded as a general law when its rival is shown to operate in a field narrower than its own. And such a rival is that part of the L. I. C. Act which deals with conditions of service of the employees of the L. I. C. - a single industrial undertaking (of a special type) as opposed to all others of its kind which fall within the ambit of the I. D. Act. Where the competition is between these two Acts, therefore, the L. I. C. Act must be regarded as a special law and (in comparison thereto) the I. D. Act as a general law."

Learned counsel also relied upon the decision in **A.V. NACHANE v. UNION OF INDIA**[2] wherein the Supreme Court held as under:

"11. The question however remains to be answered, does the Life Insurance Corporation Act, 1956 as amended in 1981 state any policy to guide the rule making authority? We have earlier referred to the observations of Mukerjea, J., in the Delhi Laws case that the legislature can formulate a policy as broadly and with as little or as much details as it thinks proper and may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of the policy. In Harishanker Bagla's case (AIR 1954 SC 465) one of the questions for decision was whether S. 3 of the Essential Supplies (Temporary Powers) Act, 1946 amounts to delegation of legislative power outside the permissible limits. It was held that legislature had laid down a legislative principle which was "maintaining or increasing supplies of any essential commodity," and "securing their equitable distribution and availability at fair prices." That statement was held as offering sufficient guidance to the Central Government in exercising its powers under S. 3. In the instant case the policy as stated in the preamble of the Amendment Act is that "for securing the interests of

> the Life Insurance Corporation of India and its policy-holders and to control the cost of administration, it is necessary that revision of the terms and conditions of service applicable to the employees and agents of the Corporation should be undertaken expeditiously". The policy stated here is at least as clear as the one held in Harishanker Bagla's case offering sufficient guidance to the Central Government in exercising its powers under that Act. We have referred to S. 48 (3) of the Life Insurance Corporation Act which requires that every rule made by the Central Government under this Act shall be laid before each House of Parliament and that if both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. This court in D. S. Garewal v. State of Punjab, (AIR 1959 SC 512) observed as follows in respect of a similar provision requiring the rules made by the delegated authority to be laid on the table of Parliament and making the rules subject to modification, whether by way of repeal or amendment on a motion made by Parliament (at p. 518) :
>
> > "This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate."
>
> In view of what has been held in Harishanker Bagla and D. S. Garewal, both of which were decided by a larger bench, we do not find it possible to accept the contention that the Act is invalid on the ground of excessive delegation of legislative functions."

and submitted that in view of the fact that Rule 19(5) has been introduced into the Rules and that provision exclusively deals as to payment of gratuity, the question of invoking jurisdiction of the Controlling Authority does not arise.

Insofar as the second question of moral turpitude is concerned, learned counsel for the petitioner strenuously contended that causing loss to the funds of the organization is nothing but misappropriation and as such, it is a moral turpitude as contemplated under Rule 19 (5) (i) of the Rules and the case on hand does not fit into the teeth of Rule 19(5)(ii). Therefore, on this ground alone, the impugned Order passed by the Controlling Authority on 21-8-1998 as confirmed by the appellate authority by an Order dated 16-11-1998 is liable to be set

aside.

Whereas, learned counsel for the 2nd respondent supported the Orders passed by the Authorities and stated that the controlling authority as well as the appellate authority have considered the matter in right perspective and the provisions of Rule 19(5) and also 19(3) of the Rules as amended on 22–6-2000 would indicate that an employee is entitled to gratuity either under Rule 19 of the Rules or under the Act, as they do not exclude either expressly or impliedly the jurisdiction of the Authority under the Payment of the Gratuity Act. This, in fact, is clear from Rule 19(3). Therefore, the impugned Orders do not call for interference of this Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either and perused the impugned Orders and other material made available on record.

Insofar as the jurisdiction of the controlling authority to entertain a claim petition in Form 'N' under the Payment of Gratuity Act is concerned, I am of the opinion that the authorities below rightly came to the conclusion, after an elaborate discussion that in view of Section 14 of the Act, any provision made under the Rules have no overriding effect. Firstly, the Payment of Gratuity Act is of the year 1972 and came into force with effect from 21-9-1972, whereas Life Insurance Corporation Act,1956 has come into force with effect from 1-7-1956. Section 14 of the Act reads as under:

> "14. **Act to override other enactments, etc.—**The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

It is also relevant to notice Rule 19 of the Rules, which reads as under;

"**19. Gratuity:-**

(1) (a) A permanent Class III or Class IV employee who has been in continuous service of the Corporation (including service with the insurer) for not less than 15 years (excluding period of probation or temporary service in respect of employees recruited on or after the 1st September,1956) and—

(i)…….

(ii)……

(b)……..

(2)…….

(3) Gratuity admissible to a Class III or Class IV employee shall be determined in accordance with the provisions of sub-rule (2) or calculated under the Payment of Gratuity Act,1972 (39 of 1972), whichever is more favourable to him.

Provided that—

a. …….

b. The provisions of the said Act shall apply notwithstanding that monthly salary of an employee calculated in accordance with clause (a) exceeds (two thousand five hundred rupees)

c. In case of an employee, who dies while in service of the Corporation after having completed 15 years of continuous service, the gratuity under the said Act shall be calculated at the rate of one month's salary for every completed year of service.

d. the amount of gratuity calculated under the said Act shall in no case exceed the maximum prescribed under the said Act.

(4) …….

(5) Notwithstanding anything contained in sub-rules (1) and (4)—

(i) where the penalty of dismissal is imposed on an employee for any act involving violence against the management or other employees or any riotous or disorderly behaviour in or near the place of employment or for an offence involving moral turpitude provided that such offence is committed by him in the course of his employment, the gratuity payable to him shall stand wholly forfeited; and

(ii) Where the penalty of compulsory retirement, removal from service or

> dismissal is imposed on an employee for any act involving the Corporation in financial loss, the gratuity payable to him shall stand forfeited to the extent of such loss."

The said Rules of 1985 have come into force with retrospective effect from 1-4-1983. Though the Rules are made under Section 48 of the Life Insurance Corporation Act,1956 in supersession of the earlier Service Rules of 1981, 1983 etc., they are only the Rules and not the Act. The L.I.C.Act, as such, had come into force on 1-7-1956 and, therefore, Section 14 of the Act prevails and overrides the provisions of the LIC Act.

In **D.J. BAHADUR'**s case (1 supra), the Apex Court was dealing with a matter of general principles, as noticed above. There cannot be any dispute about the same and it is binding on this Court. But, this is not one such case to say that the general law principles have no application to the special law, in the facts and circumstances of the present case. Therefore, this decision has no relevance to the facts of this case.

In **A.V.NACHANE**'s case (2 supra), the Apex Court held that Section 48(2C) read with Section 48(2)(cc) of the Life Insurance Corporation Act authorizes the Central Government to make rules to carry out the purpose of the Act notwithstanding the Industrial Disputes Act or any other law. This means that in respect of matters covered by Rules, the provisions of the of the Industrial Disputes Act,1947 or any other law will not be operative. Further, sub-section (2C) of Section 48 insofar it authorizes the Central Government to make rules by-passing the existing laws, does not either expressly or by implication repeal any of the provisions of the pre-existing laws, neither does it abrogate them. By-passing a certain law does not necessarily amount to repeal

or abrogation of that law. Further, the policy in the preamble of the Amendment Act is that for securing the interests of the Life Insurance Corporation of India and its policy holders and to control the cost of administration, it was necessary that revision of the terms and conditions of service applicable to the employees and agents of the Corporation should be undertaken expeditiously. The policy stated is as clear as offering sufficient guidance to the Central Government in exercising its powers under that Act. This was held in the context of challenge made to 1981 Amendment Act and the Rules made thereunder complaining that it would scuttle the Payment of Bonus Act with effect from a date anterior to the date of enactment and it was liable to fail. The employees were entitled to be paid bonus before the date of publication of LIC Class III and Class IV Employees (Bonus and Dearness Allowance) Rules,1981, since it is effective only prospectively from February 2,1981.

Thus, in the above case, directly the question as to whether the Payment of Gratuity Act would be applicable in case of LIC employees in view of Rule 19 of the Rules had not arisen. The question that had fallen for consideration of the Apex Court directly was as to whether the LIC Act is invalid on the ground of excessive delegation of legislative functions. There, in spite of there being a Bonus Act, under the provisions of the LIC Act, the Bonus Act was not made applicable since LIC Class III and Class IV Employees (Bonus and Dearness Allowance) Rules,1981 denied the protection under of the Industrial Disputes Act,1947. Thus, the said judgment also has no relevance to the facts of the present case.

In fact, Rule 19(3) of the L.I.C.Rules is very clear as to the applicability of Payment of Gratuity Act in case of any dispute. Under Rule 19(3) gratuity admissible to Class III and Class IV employees

shall be determined in accordance with the provisions of sub-rule (2) thereof or calculated under the Payment of Gratuity Act, whichever is more favourable to him. Further, it also contemplates that the provisions of the Payment of Gratuity Act,1972 shall apply notwithstanding the monthly salary of employees calculated in accordance with clause (a) of Rule 19(3) exceeds Rs.2,500/-. The gratuity under the said Act shall be calculated at the rate of one month's salary for every completed year of service. In view of this clear provision read with Section 14 of the Payment of Gratuity Act, it cannot be said that the Payment of Gratuity Act has no application and, therefore, the Controlling Authority has no jurisdiction to entertain such a claim petition. Assuming what the learned counsel for the petitioner stated that the making of rules etc., are directly under the supervision of the Parliament and shall be laid before each House of Parliament as per Section 48(3) of LIC Act and, therefore, the rule is nothing but law made by the Parliament is correct, but that itself would not help the petitioner to contend that a claim petition under the Payment of Gratuity Act is not maintainable. Under the above circumstances, I am of the view that a petition in Form 'N' under the Payment of Gratuity Act is maintainable before the Controlling Authority under the Payment of Gratuity Act.

Insofar as the contention of learned counsel for the petitioner that in view of Rule 19(5)(i) the misconduct for which the petitioner was dismissed from service is moral turpitude, therefore, it must be deemed that the whole of the gratuity is forfeited, also cannot be countenanced. Rule 19(5)(i) contemplates that where the penalty of dismissal is imposed on an employee for an offence involving moral turpitude committed by him in the course of his employment, the gratuity shall stand wholly forfeited. The offence involving moral

turpitude would indicate that the 2nd respondent has been involved in an offence (in criminal case) involving moral turpitude that committed by him in the course of his employment. There was neither any criminal case launched against the petitioner nor he was punished by any competent court of law for the offence of moral turpitude. Therefore, it cannot be said that the 2nd respondent has committed certain misconduct and as such, it amounted to misappropriation of funds and once there is a misappropriation of funds, it must be deemed that the employee involved in an offence of moral turpitude automatically. The language imported into Rule 19(5)(i) of the Rules, as seen above, does not indicate such a meaning at all. On the other hand, as contended by the learned counsel for the 2nd respondent and as held by the Controlling Authority and the appellate authority, this is a case which falls into Rule 19(5)(ii) of the Rules, which, in fact, says that for an act involving the Corporation in financial loss, the gratuity payable to him shall stand forfeited to the extent of such loss. May be, it is a misappropriation, but there is no criminal prosecution launched against the 2nd respondent to say that it was an offence of moral turpitude and every misappropriation cannot be termed as moral turpitude. Further, the amount of loss caused to the Corporation in view of the misconduct committed by the 2nd respondent has already been recovered. Therefore, the question of forfeiting the gratuity payable to the extent of loss as of now also does not arise. As such, I am of the view that the 2nd respondent is entitled for the gratuity as decided by the Controlling Authority under the Act and as affirmed by the appellate authority. No grounds are made out to interfere with the Orders passed by the Authorities under the Act. The Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

W.P.No.31926 of 1998

This Writ Petition is filed questioning the notice in Proceedings No.B2/4438/98, dated 5-11-1998 issued by the 5th respondent in pursuance of the Order dated 21-8-1998 passed by the 1st respondent, which is impugned in the said Writ Petition No.34001 of 1998.

In Writ Petition No.34001 of 1998, the Order passed by the 1st respondent dated 21-8-1998 as confirmed by the appellate authority on 16-11-1998 has been confirmed. In view of the same, this Writ Petition is also liable to be dismissed.

Accordingly, this Writ Petition is also dismissed. No order as to costs.

W.P.No.36844 of 1998

This Writ Petition is filed by the respondent-ex-employee in the said Writ Petitions, seeking to direct the Life Insurance Corporation to deposit an amount of Rs.13,00,000/- with interest thereon forthwith.

It is the contention of the petitioner that since there was a long delay of 1289 days (about 3½ years) in paying the gratuity amount to him, he is entitled for interest and penalty.

It is not for this Court to decide as to the eligibility of the penalty, interest etc., by the employee-petitioner and it is for the Authorities to decide the same. No challenge is made in this Writ Petition as to the Orders dated 21-8-1998 passed by the Controlling Authority under the Payment of Gratuity Act, as affirmed by the appellate authority by an Order dated 16-11-1998. Therefore, the Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, this Writ Petition is dismissed. No order as to costs.

07-12-2007

prk

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[1] 1981(1) SCC 315

[2] AIR 1982 SC 1126